

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOSHUA PROLENSKI and DENNIS)	
PACELEY, on behalf of themselves)	
and all others similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 21-545
)	
UNITED STATES STEEL CORPORATION,)	
TRANSTAR, LLC, GARY RAILWAY)	
COMPANY, and UNION RAILROAD)	
COMPANY, LLC,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, this 28th day of March, 2023, upon consideration of the Motion to Dismiss Plaintiffs’ First Amended Complaint (“Motion to Dismiss”) (Docket No. 29), filed by Defendants United States Steel Corporation, Transtar, LLC, Gary Railway Company, LLC, and Union Railroad Company, LLC (“Defendants”), and the briefs filed by the parties in support and in opposition, and for the reasons the Court stated on the record at the oral argument on Defendants’ motion held this day, IT IS HEREBY ORDERED that:

1. Defendants’ Motion to Dismiss (Docket No. 29) is **granted in part and denied in part**. The motion is **granted** to the extent Defendants seek the dismissal of Counts I and II of Plaintiffs’ Amended Complaint (Docket No. 27) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted, and such claims are **dismissed without prejudice** to amendment of the Amended Complaint. The motion is **denied** to the extent Defendants seek the

dismissal of Counts I and II pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction, but such denial is **without prejudice** to Defendants' ability to refile such a motion in response to a new complaint if refiling is warranted. To the extent Defendants' motion seeks to have the Court strike Plaintiffs' class claims pursuant to Rule 12(f), the motion is **denied as moot**.

2. Plaintiffs shall file their Second Amended Complaint by **April 27, 2023**, and Defendants shall respond thereto by **May 30, 2023**.
3. If Plaintiffs decline to file their Second Amended Complaint by **April 27, 2023**, then Counts I and II of Plaintiffs' Amended Complaint will be **dismissed with prejudice**.

s/ W. Scott Hardy
W. Scott Hardy
United States District Judge

cc/ecf: All counsel of record